

AN ACT

relating to the offense of prohibited substances and items in correctional facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 38.11, Penal Code, as amended by Chapters 949 (H.B. 1575) and 1092 (H.B. 2077), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN ~~[ADULT OR JUVENILE]~~ CORRECTIONAL ~~[OR DETENTION]~~ FACILITY ~~[OR ON PROPERTY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR TEXAS YOUTH COMMISSION]~~.

(a) A person commits an offense if the person provides, or possesses with the intent to provide:

(1) an alcoholic beverage, controlled substance, or dangerous drug to ~~[an inmate of a correctional facility or to]~~ a person in the custody of a ~~[secure]~~ correctional facility ~~[or secure detention facility for juveniles]~~, except on the prescription of a ~~[physician or]~~ practitioner~~[, as defined in Section 551.003, Occupations Code];~~

(2) a deadly weapon to ~~[an inmate of a correctional facility or to]~~ a person in the custody of a ~~[secure]~~ correctional facility ~~[or secure detention facility for juveniles];~~

(3) a cellular telephone or other wireless communications device or a component of one of those devices~~;~~

1 ~~cigarette, tobacco product, or money~~ to a person in the custody [~~an~~
2 ~~inmate~~] of a correctional facility [~~operated by or under contract~~
3 ~~with the Texas Department of Criminal Justice or to a person in the~~
4 ~~custody of a secure correctional facility or secure detention~~
5 ~~facility for juveniles, except for money that is provided for the~~
6 ~~benefit of the juvenile in accordance with facility rules~~];

7 (4) [~~a cellular telephone or~~] money to a person
8 confined in a correctional facility [~~local jail regulated by the~~
9 ~~Commission on Jail Standards~~]; or

10 (5) a cigarette or tobacco product to a person
11 confined in a correctional facility, except that if the facility is
12 a local jail regulated by the Commission on Jail Standards, the
13 person commits an offense only if [~~and in~~] providing the cigarette
14 or tobacco product [~~the person~~] violates a rule or regulation
15 adopted by the sheriff or jail administrator that:

16 (A) prohibits the possession of a cigarette or
17 tobacco product by a person [~~an inmate~~] confined in the jail; or

18 (B) places restrictions on:

19 (i) the possession of a cigarette or
20 tobacco product by a person [~~an inmate~~] confined in the jail; or

21 (ii) the manner in which a cigarette or
22 tobacco product may be provided to a person [~~an inmate~~] confined in
23 the jail.

24 (b) A person commits an offense if the person takes an
25 alcoholic beverage, controlled substance, or dangerous drug into a
26 correctional facility [~~or a secure correctional facility or secure~~
27 ~~detention facility for juveniles, except for delivery to a facility~~

1 ~~warehouse, pharmacy, or physician].~~

2 (c) A person commits an offense if the person takes a
3 controlled substance or dangerous drug on property owned, used, or
4 controlled by a correctional facility [~~the Texas Department of~~
5 ~~Criminal Justice, the Texas Youth Commission, or a secure~~
6 ~~correctional facility or secure detention facility for juveniles,~~
7 ~~except for delivery to a warehouse, pharmacy, or physician on~~
8 ~~property owned, used, or controlled by the department, the~~
9 ~~commission, or the facility].~~

10 (d) A person commits an offense if the person:

11 (1) possesses a controlled substance or dangerous drug
12 while in a correctional facility or [+

13 [~~(A)~~] on property owned, used, or controlled by
14 [~~the Texas Department of Criminal Justice, the Texas Youth~~
15 ~~Commission, or]~~ a [secure] correctional facility [~~or secure~~
16 ~~detention facility for juveniles, or~~

17 [~~(B) in a correctional facility or a secure~~
18 ~~correctional facility or secure detention facility for juveniles];~~

19 or

20 (2) possesses a deadly weapon while in a correctional
21 facility [~~or in a secure correctional facility or secure detention~~
22 ~~facility for juveniles].~~

23 (e) It is an affirmative defense to prosecution under
24 Subsection (b), (c), or (d)(1) [~~of this section~~] that the person
25 possessed the alcoholic beverage, controlled substance, or
26 dangerous drug pursuant to a prescription issued by a practitioner
27 or while delivering the beverage, substance, or drug to a

1 warehouse, pharmacy, or practitioner [~~physician~~] on property
2 owned, used, or controlled by the [~~department, the Texas Youth~~
3 ~~Commission, or by the operator of a secure~~] correctional facility
4 [~~or secure detention facility for juveniles~~]. It is an affirmative
5 defense to prosecution under Subsection (d)(2) [~~of this section~~]
6 that the person possessing the deadly weapon is a peace officer or
7 is an officer or employee of the correctional facility who is
8 authorized to possess the deadly weapon while on duty or traveling
9 to or from the person's place of assignment.

10 (f) In this section:

11 (1) "Practitioner" has the meaning assigned by Section
12 481.002, Health and Safety Code.

13 (2) "Prescription" has the meaning assigned by Section
14 481.002, Health and Safety Code.

15 (3) "Cigarette" has the meaning assigned by Section
16 154.001, Tax Code.

17 (4) "Tobacco product" has the meaning assigned by
18 Section 155.001, Tax Code.

19 (5) "Component" means any item necessary for the
20 current, ongoing, or future operation of a cellular telephone or
21 other wireless communications device, including a subscriber
22 identity module card or functionally equivalent portable memory
23 chip, a battery or battery charger, and any number of minutes that
24 have been purchased or for which a contract has been entered into
25 and during which a cellular telephone or other wireless
26 communications device is capable of transmitting or receiving
27 communications.

1 (6) "Correctional facility" means:

2 (A) any place described by Section
3 1.07(a)(14)(A), (B), or (C); or

4 (B) a secure correctional facility or secure
5 detention facility, as defined ["Secure correctional facility" and
6 "secure detention facility" have the meanings assigned] by Section
7 51.02, Family Code.

8 (g) An offense under this section is a felony of the third
9 degree.

10 (h) Notwithstanding Section 15.01(d), if a person commits
11 the offense of criminal attempt to commit an offense under
12 Subsection (a), ~~[or]~~ (b), or (c), the offense committed under
13 Section 15.01 is a felony of the third degree.

14 (i) It is an affirmative defense to prosecution under
15 Subsection (b) that the actor:

16 (1) is a duly authorized member of the clergy with
17 rights and privileges granted by an ordaining authority that
18 includes administration of a religious ritual or ceremony requiring
19 the presence or consumption of an alcoholic beverage; and

20 (2) takes four ounces or less of an alcoholic beverage
21 into the correctional facility ~~[or the secure correctional facility~~
22 ~~or secure detention facility for juveniles]~~ and personally consumes
23 all of the alcoholic beverage or departs from the facility with any
24 portion of the beverage not consumed.

25 (j) A person commits an offense if the person, while
26 confined in ~~[an inmate of]~~ a correctional facility, ~~[operated by or~~
27 ~~under contract with the Texas Department of Criminal Justice or~~

1 ~~while in the custody of a secure correctional facility or secure~~
2 ~~detention facility for juveniles]~~ possesses a cellular telephone or
3 other wireless communications device or a component of one of those
4 devices.

5 (k) A person commits an offense if, with the intent to
6 provide to or make a cellular telephone or other wireless
7 communications device or a component of one of those devices
8 available for use by a person in the custody of a correctional
9 facility, the person:

10 (1) acquires a cellular telephone or other wireless
11 communications device or a component of one of those devices to be
12 delivered to the person in custody;

13 (2) provides a cellular telephone or other wireless
14 communications device or a component of one of those devices to
15 another person for delivery to the person in custody; or

16 (3) makes a payment to a communication common carrier,
17 as defined by Article 18.20, Code of Criminal Procedure, or to any
18 communication service that provides to its users the ability to
19 send or receive wire or electronic communications.

20 SECTION 2. The heading to Article 18.20, Code of Criminal
21 Procedure, is amended to read as follows:

22 Art. 18.20. DETECTION, INTERCEPTION, AND USE OF WIRE, ORAL,
23 OR ELECTRONIC COMMUNICATIONS.

24 SECTION 3. Section 4, Article 18.20, Code of Criminal
25 Procedure, is amended to read as follows:

26 Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE
27 AUTHORIZED. A judge of competent jurisdiction may issue an order

1 authorizing interception of wire, oral, or electronic
2 communications only if the prosecutor applying for the order shows
3 probable cause to believe that the interception will provide
4 evidence of the commission of:

5 (1) a felony under Section 19.02, 19.03, or 43.26,
6 Penal Code;

7 (2) a felony under:

8 (A) Chapter 481, Health and Safety Code, other
9 than felony possession of marihuana;

10 (B) Section 485.032 [~~485.033~~], Health and Safety
11 Code; or

12 (C) Chapter 483, Health and Safety Code;

13 (3) an offense under Section 20.03 or 20.04, Penal
14 Code;

15 (4) an offense under Chapter 20A, Penal Code;

16 (5) an offense under Chapter 34, Penal Code, if the
17 criminal activity giving rise to the proceeds involves the
18 commission of an offense under Title 5, Penal Code, or an offense
19 under federal law or the laws of another state containing elements
20 that are substantially similar to the elements of an offense under
21 Title 5; [~~or~~]

22 (6) an offense under Section 38.11, Penal Code; or

23 (7) an attempt, conspiracy, or solicitation to commit
24 an offense listed in this section.

25 SECTION 4. Section 5, Article 18.20, Code of Criminal
26 Procedure, is amended by amending Subsection (a) and adding
27 Subsections (c) and (d) to read as follows:

1 (a) Except as otherwise provided by this section and
2 Sections [~~Section~~] 8A and 8B, only the Department of Public Safety
3 is authorized by this article to own, possess, install, operate, or
4 monitor an electronic, mechanical, or other device. The Department
5 of Public Safety may be assisted by an investigative or law
6 enforcement officer or other person in the operation and monitoring
7 of an interception of wire, oral, or electronic communications,
8 provided that the officer or other person:

9 (1) is designated by the director for that purpose;
10 and

11 (2) acts in the presence and under the direction of a
12 commissioned officer of the Department of Public Safety.

13 (c) The Texas Department of Criminal Justice may own
14 electronic, mechanical, or other devices for a use or purpose
15 authorized by Section 500.008, Government Code, and the inspector
16 general of the Texas Department of Criminal Justice, a commissioned
17 officer of that office, or another person acting in the presence and
18 under the direction of a commissioned officer of that office may
19 possess, install, operate, or monitor those devices as provided by
20 Section 500.008.

21 (d) The Texas Youth Commission may own electronic,
22 mechanical, or other devices for a use or purpose authorized by
23 Section 61.0455, Human Resources Code, and the inspector general of
24 the Texas Youth Commission, a commissioned officer of that office,
25 or another person acting in the presence and under the direction of
26 a commissioned officer of that office may possess, install,
27 operate, or monitor those devices as provided by Section 61.0455.

1 SECTION 5. Article 18.20, Code of Criminal Procedure, is
2 amended by adding Section 8B to read as follows:

3 Sec. 8B. DETECTION OF CELLULAR TELEPHONE OR OTHER WIRELESS
4 COMMUNICATIONS DEVICE IN CORRECTIONAL OR DETENTION FACILITY. (a)
5 In this section, "correctional facility" has the meaning assigned
6 by Section 39.04(e), Penal Code.

7 (b) Notwithstanding any other provision of this article or
8 Article 18.21, the office of the inspector general of the Texas
9 Department of Criminal Justice may:

10 (1) without a warrant, use electronic, mechanical, or
11 other devices to detect the presence or use of a cellular telephone
12 or other wireless communications device in a correctional facility;

13 (2) without a warrant, intercept, monitor, detect, or,
14 as authorized by applicable federal laws and regulations, prevent
15 the transmission of any communication transmitted through the use
16 of a cellular telephone or other wireless communications device in
17 a correctional facility; and

18 (3) use, to the extent authorized by law, any
19 information obtained under Subdivision (2), including the contents
20 of an intercepted communication, in any criminal or civil
21 proceeding before a court or other governmental agency or entity.

22 (c) Not later than the 30th day after the date on which the
23 office of the inspector general uses an electronic, mechanical, or
24 other device under Subsection (b), the inspector general shall
25 report the use of the device to:

26 (1) a prosecutor with jurisdiction in the county in
27 which the device was used; or

1 (2) the special prosecution unit established under
2 Subchapter E, Chapter 41, Government Code, if that unit has
3 jurisdiction in the county in which the device was used.

4 (d) When using an electronic, mechanical, or other device
5 under Subsection (b), the office of the inspector general shall
6 minimize the impact of the device on any communication that is not
7 reasonably related to the detection of the presence or use of a
8 cellular telephone or other wireless communications device in a
9 correctional facility.

10 (e) A person confined in a correctional facility does not
11 have an expectation of privacy with respect to the possession or use
12 of a cellular telephone or other wireless communications device
13 located on the premises of the facility. The person who is
14 confined, and any person with whom that person communicates through
15 the use of a cellular telephone or other wireless communications
16 device, does not have an expectation of privacy with respect to the
17 contents of any communication transmitted by the cellular telephone
18 or wireless communications device.

19 SECTION 6. Section 17, Article 18.20, Code of Criminal
20 Procedure, is amended to read as follows:

21 Sec. 17. NONAPPLICABILITY. This article does not apply to
22 conduct described as an affirmative defense under Section 16.02(c),
23 Penal Code, except as otherwise specifically provided by that
24 section.

25 SECTION 7. Chapter 500, Government Code, is amended by
26 adding Section 500.008 to read as follows:

27 Sec. 500.008. DETECTION AND MONITORING OF CELLULAR

1 TELEPHONES. (a) The department may own and the office of inspector
2 general may possess, install, operate, or monitor an electronic,
3 mechanical, or other device, as defined by Article 18.20, Code of
4 Criminal Procedure.

5 (b) The inspector general shall designate in writing the
6 commissioned officers of the office of inspector general who are
7 authorized to possess, install, operate, and monitor electronic,
8 mechanical, or other devices for the department.

9 (c) An investigative or law enforcement officer or other
10 person, on request of the office of inspector general, may assist
11 the office in the operation and monitoring of an interception of
12 wire, oral, or electronic communications if the investigative or
13 law enforcement officer or other person:

14 (1) is designated by the executive director for that
15 purpose; and

16 (2) acts in the presence and under the direction of a
17 commissioned officer of the inspector general.

18 SECTION 8. Subchapter C, Chapter 61, Human Resources Code,
19 is amended by adding Section 61.0455 to read as follows:

20 Sec. 61.0455. DETECTION AND MONITORING OF CELLULAR
21 TELEPHONES. (a) The commission may own and the office of the
22 inspector general may possess, install, operate, or monitor an
23 electronic, mechanical, or other device, as defined by Article
24 18.20, Code of Criminal Procedure.

25 (b) The inspector general shall designate in writing the
26 commissioned officers of the office of inspector general who are
27 authorized to possess, install, operate, and monitor electronic,

1 mechanical, or other devices for the commission.

2 (c) An investigative or law enforcement officer or other
3 person, on request of the office of inspector general, may assist
4 the office in the operation and monitoring of an interception of
5 wire, oral, or electronic communications if the investigative or
6 law enforcement officer or other person:

7 (1) is designated by the executive commissioner for
8 that purpose; and

9 (2) acts in the presence and under the direction of a
10 commissioned officer of the inspector general.

11 SECTION 9. Section 16.02, Penal Code, is amended by adding
12 Subsection (e-1) to read as follows:

13 (e-1) It is a defense to prosecution under Subsection (d)(1)
14 that the electronic, mechanical, or other device is possessed by a
15 person authorized to possess the device under Section 500.008,
16 Government Code, or Section 61.0455, Human Resources Code.

17 SECTION 10. The changes in law made by this Act with respect
18 to Sections 16.02 and 38.11, Penal Code, apply only to an offense
19 committed on or after the effective date of this Act. An offense
20 committed before the effective date of this Act is governed by the
21 law in effect when the offense was committed, and the former law is
22 continued in effect for that purpose. For purposes of this section,
23 an offense was committed before the effective date of this Act if
24 any element of the offense occurred before that date.

25 SECTION 11. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 3228 was passed by the House on May 4, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3228 on May 29, 2009, by the following vote: Yeas 138, Nays 1, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3228 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor